

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

December 8, 2008

In the Matter of
Robert E. Foley

Docket No. 2008-058
DEP File No. PAN-NE-08-7505
Gloucester, MA

FINAL DECISION

In this appeal, the Petitioner Robert E. Foley challenges a \$750.00 Penalty Assessment Notice (“PAN” or “Civil Administrative Penalty”) that the Northeast Regional Office of the Massachusetts Department of Environmental Protection (“MassDEP” or “the Department”) issued to the Petitioner in or about February 2008. I am issuing this Final Decision dismissing the appeal for failure to prosecute for the following reasons:

1. The case was scheduled on Wednesday, May 28, 2008 for a Simplified Hearing in accordance with 310 CMR 1.01(8)(a).
2. One day prior to the scheduled Simplified Hearing, on Tuesday, May 27, 2008, the Department’s counsel reported to MassDEP’s Office of Appeals and Dispute Resolution (“OADR”) that the Petitioner and the Department had executed a settlement agreement resolving the issues in this appeal, but the Petitioner had purportedly violated the settlement agreement and the Department needed time to investigate the matter. Per the Department’s request, the Chief



Presiding Officer postponed the Simplified Hearing so that the Department could perform its investigation.

3. As of September 9, 2008, nearly four months after the original Simplified Hearing date had been postponed, and the parties had not given OADR any indication whether they had settled the appeal. During that time period, the Petitioner also had not taken any action to prosecute the appeal. Accordingly, on September 9, 2008, the Chief Presiding Officer issued an Order to Show Cause directing the Petitioner to file a written statement with OADR by September 30, 2008 demonstrating why this appeal should not be dismissed for failure to prosecute. The Order to Show Cause made clear that “[i]f the Petitioner fail[ed] to file the written statement . . . by September 30, 2008, the Petitioner’s appeal [would] be dismissed pursuant to 310 CMR 1.01(5)(a)15.f.vi. and 1.01(10)” for failure to prosecute.

4. The deadline for the Petitioner to comply with the Order to Show Cause expired nearly two months ago. As of this date, the Petitioner has failed to respond to the Order to Show Cause. As a result, his appeal is dismissed for failure to prosecute pursuant to 310 CMR 1.01(5)(a)15.f.vi. and 1.01(10).

This final document copy is being provided to you electronically by the
Department of Environmental Protection. A signed copy of this document
is on file at the DEP office listed on the letterhead.

Date: _____

Laurie Burt
Commissioner